PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC.

A HISTORY OF THE LITIGATION

1972 - 1981

The Puerto Rican Legal Defense and Education Fund has now completed its first nine years. The effectiveness of its litigation efforts is reflected below in the summaries of the cases that have been brought during this period. PRLDEF not only has been exceedingly successful in most of its litigation efforts, but those successes have resulted in real changes for the Puerto Rican communities. Bilingual education has been made available to tens of thousands of students. Discriminatory employment barriers have been eliminated, and thousands of jobs have and will be obtained. Bilingual elections have made voting accessible to a highly political community. Discriminatory quotas for public housing have been struck down, and housing obtained. Social services have become available in Spanish providing benefits previously denied and reducing unnecessary delays.

The primary determinant of PRLDEF in selecting cases has been the impact that the cases would have on the Puerto Rican community. Our litigation has been almost exclusively class actions for Puerto Ricans and other Latinos, and the successes have inured to the whole community.

As the summary below reflects, education rights and employment discrimination have been the two priority areas of concern. These were obvious choices. Better education

and better jobs help eradicate the enormous economic deprivations that are suffered by Puerto Rican families and reduce some of the other problems faced by Puerto Ricans in voting, housing, and government benefits.

The cases below reflect the national scope of our operation. Cases have been brought throughout the Northeast for bilingual education, employment discrimination and voting rights.

An attempt has been made to include all the cases brought over the last nine years. However, a few obviously have been missed. Nevertheless, the summary provides an accurate picture of both the success of the litigation and its results. What is not reflected is the amount of time expended in these efforts. The average length of time for each case is approximately three to four years from the filing of the complaint to some resolution of the merits. This period does not include the time expended in obtaining attorney's fees and monitoring compliance with the final order. For example, Aspira was brought in the summer of 1972 and settled in the summer of 1974; there were contempt proceedings in 1975 and 1976; and continuing monitoring led to the filing of Dyrcia, S. v. Board of Education in 1979.

The last twelve months reflects the continually growing strength of the organization. During this period we have filed nine new lawsuits as well as numerous administrative complaints which may develop into lawsuits. We've obtained substantial victories during the period as well. Most

recently, we blocked the primary elections in New York City because of Voting Rights Act violations. In January, we eliminated the PACE examination for federal employment. In June, PRLDEF settled a lawsuit providing for affirmative quotas in the promotion of sergeants in the New York City Police Department. And in August, another settlement eliminated strict rank order selection of police officers and replaced it with a system of random selection guaranteeing about 29% minority jobs. In Jersey City, we obtained an order blocking the laying-off of bilingual teachers. In Bridgeport, we opened up the vocational education programs to limited English speaking students. The Supreme Court denied certiorari in New York City's attempt to lift a 1 to 2 quota for minority hiring of police officers, and PRLDEF has filed for certiorari for the first time in another police case. Finally, PRLDEF obtained a court order placing it in the Combined Federal Campaign.

The recent flurry of successes augurs well for our decennial year. The increased recognition that these cases have brought PRLDEF should result in increasing demands for our services. The legal staff is committed to meeting these demands and ending the continuing discrimination suffered by the community.

The following summary of the litigation is broken down into several areas: education rights; employment discrimination; voting rights; government benefits; housing discrimination; and criminal justice.

EDUCATION RIGHTS

The Puerto Rican Legal Defense and Education Fund's litigation in education rights has primarily focused on bilingual education and desegregation. Even in desegregation cases, however, PRLDEF has been principally concerned with preserving the bilingual education programs. In addition to litigation, we have defended the right to bilingual education in commenting on proposed regulations and legislation.

Aspira v. Board of Education, was PRLDEF's first case. Through a settlement and enforcement proceedings, PRLDEF was able to obtain a bilingual education for every Hispanic in the New York City schools who had limited English language skills. Although the case was settled in 1974, the monitoring of the Consent Decree has continued.

Dyrcia,S. v. N.Y.C. Board of Education, is a spinoff from the Aspira Consent Decree. Dyrcia seeks to ensure the rights to bilingual education for special education students. The court has issued a broad injunction requiring the complete reorganization of the Board's delivery of special education services.

PRLDEF has also obtained the rights to bilingual education in three suits outside of New York City: Lopez de Vega v. Thomas (Philadelphia); Rios v. Read (Patchogue, Long Island); and, Cintron v. Brentwood Union Free School

District (Central Islip, Long Island). Our latest case in this area was filed in May, 1981, in Jersey City, New Jersey. Puerto Rican Education Coalition v. Board of Education. We have already obtained an order barring the laying-off of bilingual teachers.

In the first assault on vocational education programs, PRLDEF was able to obtain a consent decree providing for the entry of limited-English-proficient Hispanics into Connecticut state-run vocational programs. Spanish-American Coalition v. Connecticut Department of Education. The decree also requires increased outreach to the Hispanic community to provide information about the availability of these vocational programs.

PRLDEF has been involved in desegregation lawsuits throughout the Northeast. In each instance we have intervened on behalf of the Puerto Rican community to protect the bilingual programs and to insure that the burden of busing did not fall disproportionately on the community. Morgan v. O'Bryant (Boston); Evans v. Buchanan (Wilmington, Del.); Arthur v. Nyquist (Buffalo) and U.S. v. Board of Education of Waterbury, Ct. (Waterbury). In Morgan, Evans and Arthur, after initially carrying the full load of the litigation and establishing the priorities of the bilingual programs, PRLDEF has turned over the day to day concerns of the litigation to local counsel. In Waterbury, PRLDEF has remained lead counsel.

More recently, PRLDEF along with the Mexican American Legal Defense Fund have sought intervention in the Chicago desegregation case.

Another education rights case involved the maintenance of double sessions for a wholly Puerto Rican elementary school in Williamsburg, Brooklyn. Parents Committee of P.S. 19 v. Community School Board of District 14. The double sessions meant that students were effectively losing a day of school each week. The lawsuit ended the double sessions and at the same time obtained additional bilingual education funds and programs for the children to compensate for the past deprivations.

Along with our education litigation, we've had to defend educators who have supported bilingual education. In Fuentes v. Roher, we defended school superintendent Luis Fuentes who had been removed by the local school board in part because of his expansion of the bilingual program. Batista v. New York City Board of Education is a lawsuit challenging the firings of two principals who were appointed by Mr. Fuentes. Finally, in Rodriguez v. Purcell, we obtained an order barring the Board of Education from threatening teachers, who were giving information to us in the Aspira litigation, with criminal prosecution.

We have filed amicus briefs in Lau v. Nichols (right to bilingual education); Bradley v. Milliken (power to provide bilingual education as part of the remedy for desegregation); and, DeFunis v. Odegaard and Regents of the

University of California v. Bakke (quotas for professional school admission).

The PRLDEF is in the process of filing several lawsuits which challenge the lack of adequate educational services to Hispanic students. These suits will focus on elementary schools where students are reading well below grade level, but where there have been no steps taken to remedy these inequities.

EMPLOYMENT DISCRIMINATION

PRLDEF's litigation has focused primarily on public sector employment. The civil service uniformed services had traditionally had provided opportunities for employment to other ethnic groups, but Puerto Ricans were discriminatorily excluded. This was an area which could potentially lead to a large numbers of jobs and at the same time, because of the presence of Puerto Rican workers, raise the level of services provided by these civil servants in Latino communities.

Thus, PRLDEF has brought a number of employment discrimination lawsuits against New York City:

> Luna v. Bronstein (Sanitation Department). The settlement in this lawsuit lowered the height requirement to 5'3",with the possibility after further study that the height requirement would be lowered even more, and reduced, as well,

the reading level required to pass the written qualifying examination.

Vulcan Society v. Civil Service Commission (Fire Department). Litigation resulted in a hiring ratio of one minority appointment for every three non-minority appointments. A subsequent stipulation lowered the height requirement to 5'4" and eliminated the automatic disqualification of a candidate with a petty larceny conviction.

Guardians Association v. Civil Service Commission (I & II) (Police Department). The case, originally filed in 1972, sought quota hiring of minorities for police officer positions. The lawsuit challenged eight examinations given in 1968 through 1970. A motion for preliminary injunction was denied and declared moot because it it appeared that the City would be hiring all the minority police officers on the eligible lists. Traditionally, only the top scorers on examinations were selected for appointment; thus, minorities who passed the examination but with lower scores were never selected.

After the layoffs in 1975, a new lawsuit was filed charging that the last hired, first-fired lay-offs had had a discriminatory effect on those minorities hired from the 1968 through 1970 examinations. After two appeals, we have been able to obtain back seniority for

many of those who were hired, but are petitioning the Supreme Court for review of the decision which denies relief to some of our clients. This is the first case in which the Fund has needed to appeal to the Supreme Court.

Guardians Association v. Civil Service Commission (III) (Police Department). This lawsuit involves the police officer examination given in 1979. We were able to obtain a 1 to 2 quota for minority hiring which has resulted so far in 659 jobs for Hispanics.

The Court order also provided an opportunity to challenge the next police examination which was given in June, 1981. A settlement on the use of that examination establishes random selection as the method of choosing candidates who pass the examination as opposed to strict rank ordering of candidates based on their examination scores. Because much of the discriminatory impact of past examination has been caused by rank ordering, the use of random selection will serve as an important precedent for the future.

Hispanic Society v. Civil Service Commission (Sergeant, Police Department). A quota promotion system was established in a settlement of this action. The quota insures that the percentage of persons promoted to Sergeant over the next three years will reflect

the percentage of Hispanics who took the latest examination for sergeant.

PRLDEF has also challenged civil service employment in the federal government. In a case called Luevano v. Campbell, a settlement was obtained which eliminates the PACE examination for G.S. 5 and 7 positions in 120 job classifications. The PACE examination will be replaced by separately developed selection procedures for each of the 120 jobs. During the period that PACE is being phased out and for the 3 years after a new procedure has been in place, the federal government has agreed to use alternate hiring programs to insure that the percentage of persons obtaining the positions is equal to the percentage of minority test-takers.

PRLDEF'S private employment case involved the mens clothing industry in Southern Jersey. Miranda v. Local 208. There were two major problems that were addressed by that lawsuit: (1) inadequate representation by the union; and (2) the exploitation of Puerto Rican workers through job assignments to the lower paying jobs. We successfully resolved the first through a settlement with the union, but the court rejected our claim on the second. The court found that we had failed to demonstrate that any particular plaintiff or class member who had the necessary skills had ever been rejected from one of the higher paying skilled positions.

Other than government employment or large private employers, usually heavy industry, few employment cases lend themselves to class action litigation. The numbers of positions available and the numbers of applicants are simply too small. Thus, we have handled a few individual cases of employment discrimination where we have believed that successful results may have some over-flow effect on the employer generally. We have also sought out individual cases as training vehicles for the Visiting Attorneys. Some of these have been: Rivera v. New York Racing Association (hiring for a maintenance position at race track); Norman v. Queensborough College (tenure denial to Puerto Rican professor); and, Gonzalez v. Lansky (hiring and licensure of an ex-felon seeking to become a bilingual teacher). We presently have several other cases, Cardenas v. General Mills (promotion to sales manager in major employer); Irizarry v. New York City Housing Authority (promotion in N.Y.C. Housing Police); Ramos v. Grumman Aerospace, Inc. (hiring for engineering position). Carrasco v. O.T.B. (promotion to management position); Rivera v. Department of Labor, (promotion in federal agency); and, Vazquez v. Consolidated Edison (promotion).

Our amicus briefs in the employment discrimination area have included: Weber v. Kaiser Aluminum (legality of quotas); Fullilove v. Carey (Constitutionality of Governor's Executive Order requiring affirmative action by state

contractors); and, Frontera v. Sindell (the right to Spanish language examination for carpenter position).

In the future we will continue to look for employment discrimination cases in the public sector in entry level positions. We will be looking as well to expand our work in the private employment area, particularly the construction industry which appears to be growing after a period of little activity.

VOTING RIGHTS

PRLDEF has been the primary enforcer of Section 4(e) of the Voting Rights Act of 1965. This provision provides that persons born in Puerto Rico cannot be denied the right to vote because of the inability to read or interpret any matter in the English language. Based on Section 4(e) PRLDEF has obtained bilingual elections, both written material and oral assistance, throughout the Northeast. First, in Lopez v. Dinkins, we obtained a court order providing for bilingual school board elections. This case was followed closely by Torres v. Sachs, where all New York City elections were made bilingual. Ortiz v. New State Board of Elections brought bilingual elections to the rest of New York State. The same relief was obtained for Philadelphia, Arroyo v. Tucker, and for 4 counties in New Jersey, Marquez v. Falcey.

This litigation then became the basis of the 1975 Amendment to the Voting Rights Act which provided bilingual

elections for other language minorities throughout the country.

Recently, PRLDEF has challenged the redistricting of the New York City Council seats, also under the Voting Rights Act. Gerena-Valentin v. Koch. Under Section 5 of the Act any changes in voting practices, including redistricting, must be approved by the Justice Department. This Section applies basically to southern states because of their histories of denying the right to vote to blacks, but applies to New York City as a result of the Torres v. Sachs case. The City had not obtained preclearance on the recent councilmanic redistricting, and PRLDEF was able to enjoin the primary election.

In Echevarria v. Carey, PRLDEF successfully challenged a lengthy residency requirement for new voters in primary elections. The requirement barred Puerto Ricans coming from Puerto Rico to New York from voting in the primary unless they had voted in most recent general election.

GOVERNMENT BENEFITS

PRLDEF's litigation in this area has focused primarily on the right to Spanish written materials and oral assistance. We have been able to show that the denial of Spanish language assistance has resulted both in a delay in obtaining government services as well as in some instances

the denial of those services. The four principal cases in this area are Sanchez v. Maher; Mendoza v. Lavine; Pabon v. Levine; and Barcia v. Sitkin.

In Sanchez, through a stipulation and its subsequent enforcement, the Connecticut state welfare department was required to hire additional bilingual personnel and provide Spanish language forms and notices. Similarly in Mendoza, the New York City Department of Social Services has been required to provide bilingual assistance. Success in both Sanchez and Mendoza resulted from forcing the federal government through litigation to do compliance reviews of the defendants and then enforcing the findings of noncompliance.

Pabon v. Levine accomplished the same results in the New York State's Unemployment Insurance Division offices without federal government intervention. When it appeared that Pabon was not being enforced or complied with by the Unemployment Insurance Appeal Board, PRLDEF filed Barcia v. Sitkin. That action also raises due process claims.

PRLDEF was also involved in two other cases involving unemployment insurance benefits. In both cases, Galvan v. Lavine (New York) and Rodriquez v. Hoffman (New Jersey), we were successful in eliminating a rule which had cut-off benefits to Puerto Ricans who had returned to Puerto Rico.

In another case in this area, PRLDEF joined with other civil rights organizations in challenging the closing of hospitals in New York City. Bryan v. Koch. While the

litigation was itself unsuccessful, it served as additional pressure on the City to keep open Metropolitan Hospital and to maintain Sydenham Hospital as an outpatient clinic.

In Vazquez v. Ferre, PRLDEF sued Puerto Rico and New Jersey for failures to insure that migrant labor facilities in New Jersey met minimum health standards. The resulting settlement provided that farms be inspected prior to the clearance of work orders permitting Puerto Rican workers to be transported to the farms.

HOUSING DISCRIMINATION

PRLDEF's litigation in this area has focused on two issues: ending discrimination in existing housing and fighting discriminatory efforts to block low-income housing. Unlike other forms of discrimination, housing discrimination usually presents itself in individual cases - refusals to rent or sell apartments and houses. Often those who have been discriminated against do not want to sue because the act of discrimination makes the apartment an undesireable place to live. Only large housing complexes lend themselves to class actions.

In Williamsburg Fair Housing Committee v. New York City Housing Authority, PRLDEF challenged a discriminatory 25% quota for minorities in public housing in Williamsburg. After lengthy negotiations, an interim quota to rectify past

discrimination was imposed. Once the time for the remedial quota has run, all quotas will be lifted.

In Huertas v. East River Housing Corp., PRLDEF challenged the discriminatory sales practices of low-income cooperatives on the Lower East Side. There are 4,500 units of cooperative housing which was built with monies from garment and textile workers unions. The buildings are almost totally white, less than 3% Hispanic and black. A trial was held this spring, and a decision is expected later in the fall.

PRLDEF litigation to protect low-income housing has encompassed three lawsuits: Hudgins v. City of New York; Pross v. Landrieu; and, Lower East Side Joint Planning Council v. Board of Estimate. Hudgins involves the West Side Urban Renewal Area, and Pross the Manhattan Valley area in New York City. In Hudgins, middle-income homeowners sued to prohibit the City and our client, the United Tenants Association, from making repairs to buildings in an Urban Renewal Area. The buildings had originally been slated from demolition, but under a revised Urban Renewal Plan were to be renovated for low-income housing. Because the revision of the Plan had not been approved by HUD, the middle-income homeowners claimed that the repairs could not be made, that the repairs were really illegal renovation. The court denied the homeowners' request for a preliminary injunction.

Middle-income homeowners in Pross sued the City, the federal government, and our client, the Manhattan Valley

PRLDEF continues to look for discrimination cases involving large housing complexes. These suits lend themselves to broad injunctive relief.

CRIMINAL JUSTICE

PRLDEF has had a limited involvement in the area of criminal justice. Our primary litigation was an unsuccessful attempt to enjoin widespread practices of police brutality in Suffolk County. Coleman v. Klein. That case sought to reform police practices and provide for some sort of citizen review of police actions. Unfortunately, while we were still in the discovery process, the Supreme Court reversed a case similar to Coleman and made the burden of proof for broad injunctive relief impossible to meet. The Supreme Court decision required a showing of conscious acts by high police officials supporting the actions of police misconduct.

We have recently filed an individual case of police brutality involving the New York City Police Department

PRLDEF continues to look for discrimination cases involving large housing complexes. These suits lend themselves to broad injunctive relief.

CRIMINAL JUSTICE

PRLDEF has had a limited involvement in the area of criminal justice. Our primary litigation was an

unsuccessful attempt to enjoin widespread practices of police brutality in Suffolk County. Coleman v. Klein. That case sought to reform police practices and provide for some sort of citizen review of police actions. Unfortunately, while we were still in the discovery process, the Supreme Court reversed a case similar to Coleman and made the burden of proof for broad injunctive relief impossible to meet. The Supreme Court decision required a showing of conscious acts by high police officials supporting the actions of police misconduct.

We have recently filed an individual case of police brutality involving the New York City Police Department Cortes v. Conigliaro. We've referred numerous other cases to administrative bodies charged with monitoring police conduct.

We have also filed several amicus curiae briefs in this area. We filed an amicus curiae brief in the United States Supreme Court supporting a petition for certiorari in U.S. v. Cruz. That case involved the right of a Puerto Rican criminal defendant to ask potential jurors about membership in segregated private clubs.

In another amicus brief in New Jersey v. Curet, we joined a Puerto Rican criminal defendant in an attempt to overturn a conviction because of the lack of adequate translator services.

Finally in Springfield Housing Authority v. Olivo, we supported the appeal of two Puerto Rican tenants who were

convicted of misdemeanors for failing to vacate condemned residences. The tenants had only been provided notice in English, and it was conceded that they could not read English.